

**From:** Pallito, Joanna  
**Sent:** Wednesday, March 23, 2016 11:24 AM  
**To:** Duggan, Jen  
**Subject:** Potential ECF cap waiver  
**Attachments:** ECF\_PFOA No Bennington\_Memo\_03-23-16.docx; DEC\_Elizabeth\_Mine\_ECF\_Waiver Authorization Req\_12-16-15.doc.pdf

**Importance:** High

**Categories:** PFOA

Hi Jen – attached is my first draft at the memo to AoA for potentially requesting through the legislature a waiver on the ECF caps for the PFOA site. I've also attached what we submitted for a packet on the Elizabeth Mine site which is of course a superfund site and is different on many levels. You'll see that the memo notes the previous waiver on the Pownal site and that we have Elizabeth Mine in for this year. You'll also see we provided much more context to AoA on the Elizabeth Mine site for obvious reasons since it has been a site we've been working on for years.

Let me know your thoughts!



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**Joanna Pallito**, *Director*

[phone] 802-490-6238

[cell] 802-578-3180

[email] [joanna.pallito@vermont.gov](mailto:joanna.pallito@vermont.gov) **(PLEASE NOTE NEW EMAIL ADDRESS)**

**Agency of Natural Resources**  
**Department of Environmental Conservation**  
Administration & Innovation Division  
One National Life Drive, Main 2  
Montpelier, VT 05620-3520


**Vermont Department of Environmental Conservation**

Commissioner's Office

One National Life Drive, Main 2 [phone] 802-828-1556

Montpelier, VT 05620-3520 [fax] 802-828-1541

*Agency of Natural Resources*

To: Justin Johnson, Secretary, Agency of Administration  
 Andrew Pallito, Commissioner, Department of Finance & Management, Agency of Administration  
 Jason Aronowitz, Budget Analyst, Department of Finance & Management, Agency of Administration

From: Alyssa Schuren, Commissioner, Department of Environmental Conservation  
 Matt Chapman, General Counsel, Department of Environmental Conservation  
 Tracy LaFrance, Financial Director, Department of Environmental Conservation

Re: PFOA North Bennington Site – Authorization to spend over statutory limit

Date: March 23, 2016

The Agency of Natural Resources, Department of Environmental Conservation (DEC) requests language in the FY 17 Appropriations Bill to authorize future annual expenditures over \$100,000 from the Environmental Contingency Fund (ECF) for the recently identified PFOA contaminated North Bennington site. Actual expenditures from the ECF will depend greatly on the final agreements reached with potential responsible parties as well as the best determined remediation strategies. These efforts will of course need to be coupled with the agreed upon payment arrangements and the available balance in the fund.

There are nine authorized spending categories within the ECF. Section 1283(b) of Title 10 limits expenditures from each spending category to \$100,000 *“unless the secretary has received the approval of the general assembly, or the joint fiscal committee ...”*

Although we are clearly operating under an emergency response situation for this site, we felt it was important to remain transparent and seek in good faith the following legislation in an effort to meet the state’s ongoing potential needs for this site. With that, the Agency proposes the following language in the FY17 Appropriations Bill:

Sec. XXX. Notwithstanding the \$100,000 limitation on the expenditure of funds from the environmental contingency fund established pursuant to 10 V.S.A. § 1283, the secretary of the agency of natural resources may expend funds to accomplish activities authorized under 10 V.S.A. § 1283(b)(9) at the PFOA North Bennington site.

The Legislature has considered and authorized similar requests in the past for some of our Superfund sites under somewhat similar circumstances. See 2008, No. 65 (Pownal Site) and currently the Elizabeth Mine Superfund Site in the FY17 Appropriations Bill (H.875) Section E.709. We would be happy to discuss this request with you in person if that would be helpful.

cc: Trey Martin, Deputy Secretary, Agency of Natural Resources  
 Steve Chadwick, Administrative Services Director, Agency of Natural Resources  
 Chuck Schwer, Director, Waste Management & Prevention Division, DEC



**Vermont Department of Environmental Conservation**

*Agency of Natural Resources*

Commissioner's Office

One National Life Drive, Main 2 [phone] 802-828-1556

Montpelier, VT 05620-3520 [fax] 802-828-1541

To: Jason Aronowitz, Budget Analyst, Department of Finance & Management, Agency of Administration

From: George Desch, Deputy Commissioner, Department of Environmental Conservation  
Joanna Pallito, Director, Administrative Services Division, Department of Environmental Conservation  
Rebecca Ellis, Senior Counsel for Governmental Affairs, Department of Environmental Conservation

Re: Elizabeth Mine Superfund Site – Authorization to spend over statutory limit

Date: December 16, 2015

The Agency of Natural Resources, Department of Environmental Conservation (DEC) requests language in the FY 17 Appropriations Bill to authorize future annual expenditures over \$100,000 from the Environmental Contingency Fund (ECF) for the Elizabeth Mine Superfund. Actual expenditures from the ECF will depend on the success of the remediation strategies and the available balance in the fund. See the attached memo for details on remediation strategies and anticipated costs.

There are nine authorized spending categories within the ECF. Section 1283(b) of Title 10 limits expenditures from each spending category to \$100,000 *"unless the secretary has received the approval of the general assembly, or the joint fiscal committee ..."*

To meet the state's ongoing obligations for this site, the Agency proposes the following language in the FY17 Appropriations Bill:

Sec. XXX. Notwithstanding the \$100,000 limitation on the expenditure of funds from the environmental contingency fund established pursuant to 10 V.S.A. § 1283, the secretary of the agency of natural resources may expend funds to accomplish activities authorized under 10 V.S.A. § 1283(b)(9) at the Elizabeth Mine Superfund Site.

The Legislature has authorized similar requests in the past for other Superfund sites under similar circumstances. See 2008, No. 65 (Pownal Site). We would be happy to discuss this request with you in person if that would be helpful.

cc: Trey Martin, Deputy Secretary, Agency of Natural Resources  
Steve Chadwick, Administrative Services Director, Agency of Natural Resources  
Chuck Schwer, Director, Waste Management & Prevention Division, DEC

## Memorandum

Date: December 16, 2015

From: John Schmeltzer, Environmental Analyst

To: Joanna Pallito, Administrative Services Director

Subject: Background Information and Estimated State Costs for Elizabeth Mine

In 2001, the Elizabeth Mine was placed on the National Priorities List a.k.a. Superfund. Acid mine drainage from this site was impairing downstream waters. This mine is the largest of the three former copper mines in Vermont that are on the U.S. Environmental Protection Agency's (EPA) Superfund list. To date, EPA has spent over \$70M at the Elizabeth Mine Superfund Site. Mitigation efforts so far have focused primarily on the mine features within the Copperas Brook watershed. These efforts have included stabilizing a 120-ft tailing dam; diverting groundwater and surface water around the two largest waste piles; moving a 12-acre waste rock pile to the top of the two largest waste piles; and installing an approximately 40-acre cover system. Although mitigation efforts are not yet complete at Elizabeth Mine, about four miles of the West Branch of the Ompompanoosuc River has been restored to Vermont Water Quality Standards.

Typically EPA would require a mitigation effort of this magnitude to be performed as a "remedial action," which requires a ten percent capital cost share from the State. Fortunately for the State, EPA was willing to perform a majority of the mitigation efforts as either a Time-Critical or Non-Time Critical Removal Action (NTCRA), which does not require a ten percent capital cost share. A majority of the remaining work, which includes mitigation efforts of mine features within the Lord Brook watershed, will be performed under a "remedial action." A ten percent capital cost share will be required. Regardless of whether it is a removal or remedial action, the state is responsible for operation and maintenance (O&M) of all remedies constructed by EPA in perpetuity.

The State has entered into two State Superfund Contracts (SSCs) to date with EPA related to "remedial actions" at Elizabeth Mine. SSCs outline the roles and responsibilities between EPA and the State, including their financial obligations. It is anticipated that a third SSC will be needed to address the final O&M obligations for the remaining mitigation efforts not covered by the two previous SSCs. As noted above the state is responsible for the O&M of all remedies constructed by EPA and so there is no capital cost share component involved.

The first SSC was entered on June 2008 with EPA for mitigation of the copperas factory area estimated at \$1.7M, of which the State will have a ten percent capital cost share not to exceed \$170K. The second SSC was entered in August 2015 for remediating the mine features within the Lord Brook Watershed. EPA has estimated the cost for this remedy to be \$11.1M. Our ten percent capital cost share for this remedy is not to exceed \$1.1M. EPA has received funding of approximately \$5M to begin efforts under the "remedial action" covered under the most recent (second) SSC. Based on discussions with EPA, it is expected that we will be required to begin paying a portion of our cost share towards these construction remedies for this first phase of the remedial action which will span over a three to four-year period, starting in FY17. No additional state capital cost share beyond what has been detailed above is anticipated for the Elizabeth Mine site at this time.

The ECF spending category that is specific for paying capital and O&M costs at a given Superfund site is 10 V.S.A. § 1283(b)(9), which has a \$100K expenditure limit unless authorization is given from the general assembly or the joint fiscal committee. As stated previously, we have currently entered into two SSC's under this category and anticipate a third SSC regarding the O&M components. With costs related to meeting the state's ongoing obligations at this State Superfund site expecting to exceed \$100k in FY17, we will need authorization within the ECF to spend beyond that statutory limit for this particular category.

Below is a preliminary estimate of our capital contribution and O&M costs in present dollars over the next five years. The O&M estimate includes O&M for all remedies that the state will be responsible for at Elizabeth Mine. Currently the state anticipates taking over the O&M for the entire cover system of the three major tailing piles as early as FY17. There is however still uncertainty for the total O&M costs depending primarily on whether a passive treatment system or active treatment system is needed so that discharges meet water quality standards at the compliance points. It also unclear at this time whether or not the State will be taking over O&M for the treatment system. If this becomes necessary, O&M costs could be seen in as early as FY19, which is reflected in the table below. The annual O&M cost range below provides both the "best-case" and "worst-case" scenarios.

#### Elizabeth Mine – Estimated Expenditures over the Next Five Years

Total Capital Cost Share            \$1.27 M capital cost share

Annual O&M                            Over the next five years; subsequent five year blocks will be similar after taking into account inflation:

Fiscal year	Estimated Capital Cost Contribution	Annual O&M Estimates	Estimated Total
FY17	\$60K	\$45K-\$74K	\$105K-\$134K
FY18	\$140K	\$53K-\$82K	\$193K-\$220K
FY19	\$200K	\$179K-\$378K	\$379K-\$578K
FY20	100K*	\$129K-\$328K	\$229-\$428K*
FY21	TBD*	\$133K-\$332K	\$133K-\$332K*

\*Depending on federal funding availability, the required capital cost obligation could be higher. At this time, EPA has \$5M authorized and obligated to the remedy within the Lord Brook Watersheds and this amount will likely increase in the next 3-5 years. Please note that some of the estimated O&M values are different from the FY15 Year End GASB49 filing based on more updated data related to the project scope and costs.